

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIMMY TORRES,

Defendant.

Case No. 2:12-CR-00154-KJD-GWF

ORDER

Presently before the Court is Defendant's Motion for Release on Bond Pending Appeal (#78). The Government filed a response in opposition (#81) to which Defendant replied (#82).

I. Procedural History

Defendant pled guilty to one count of Felon in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) on September 3, 2013. According to the parties' plea agreement, the Court applied a base offense level of 24 based on two prior "crimes of violence" pursuant to the United States Sentencing Guidelines ("the Guidelines") 2K2.1(a)(2); § 4B1.2. After further adjustments and considering Defendant's criminal history category of VI, Defendant's Guidelines sentence range was 92 to 115 months of imprisonment. The Court imposed a sentence of 92 months.

Defendant filed a timely notice of appeal and while the case was on direct appeal, the United States Supreme Court issued its decision in Johnson v. United States, 135 S. Ct. 2551 (2015) which

1 found the residual clause in the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e),
2 unconstitutional. The Ninth Circuit Court of Appeals assumed that Johnson’s holding nullified
3 §4B1.2(1)(2)’s identically worded residual clause. Consequently, the Ninth Circuit held that
4 Defendant’s sentence was “illegal” and, thus, the appeal waiver in his plea agreement did not bar his
5 appeal. The Ninth Circuit vacated his sentence and remanded the case for re-sentencing on July 14,
6 2016. On September 8, 2016, the Government filed a petition for panel rehearing which has not yet
7 been ruled upon. On September 23, 2016, Defendant filed the present motion for release. The Court
8 held a hearing on October 26, 2016.

9 II. Analysis

10 18 U.S.C. § 3143(b) allows the Court to release a defendant pending an appeal if: (1) there is
11 clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of
12 any other person or the community if released; and (2) that the appeal raises a substantial question of
13 law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a term
14 of imprisonment, or a reduced sentence to a term of imprisonment less than the total of the time
15 already served. Clearly, the appeal has raised a substantial question likely to result in a reduced
16 sentence of imprisonment less than the total time already served.

17 Further the Court finds that Defendant has demonstrated by clear and convincing evidence
18 that he is not a flight risk. The only question remaining is what set of conditions can be fashioned
19 under the supervision of Pre-Trial Services to neutralize any risk of flight or danger to the
20 community. Therefore, the motion is granted dependant upon agreeable conditions being fashioned
21 under the supervision of Pre-trial Services. Accordingly, the Court sets hearing on what conditions

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1 will be necessary to ensure Defendant's appearance at his re-sentencing and to mitigate any risk of
2 danger to the community.

3 Motion Hearing set for Tuesday, November 15, 2016 at 9:00 AM in LV Courtroom 4A
4 before Judge Kent J. Dawson.

5 DATED this 28th day of October 2016.

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9 Kent J. Dawson
United States District Judge
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